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Office of The Attorney General
State of Connecticut

January 3, 2012

Board of Selectmen
Board of Finance
Town of Bridgewater
P.O. Box 216
Bridgewater, Connecticut 06752

Re: The Burnham Fund – Attorney General Investigation

Dear Board Members:

I write concerning the William D. Burnham Poor Fund (the "Fund") established in the Town of Bridgewater (the "Town"). As you know, we are currently investigating the management of the Fund. That investigation is undertaken pursuant to the authority and responsibility of the Office of the Attorney General ("OAG") to "represent the public interest in the protection of any gifts, legacies or devises intended for public or charitable purposes." Conn. Gen. Stat. § 3-125.

Our investigatory focus to date has been the historical standards by which distributions have been made from the Fund, the administrative oversight of the Fund, and the possible misuse of charitable funds. Although our investigation into past conduct continues, we urge you to work cooperatively to develop standards and procedures for management of the Fund. We provide herein our guidance in formulating appropriate processes and standards. Appropriate policies should be implemented quickly so that qualifying Bridgewater residents can benefit from Fund distributions without delay.

Background

The Burnham Fund was created in 1925, six years after William D. Burnham died. In his will, under Article Ninth, subsection (p), Mr. Burnham left \$10,000 to the Town of Bridgewater, "the interest and income from which may be used for the benefit and relief of the poor of said Town." There is no evidence that this charitable bequest was ever altered by a court of competent jurisdiction. Accordingly, Mr. Burnham's charitable intent as evidenced in his will controls the appropriate uses of the Burnham Fund—"for the benefit and relief of the poor" of Bridgewater.

For many years, Bridgewater had an unwritten policy that the First Selectman of Bridgewater alone made the decisions regarding disbursements from the Burnham Fund. In 1984, the Board of Selectmen adopted a written policy that was basically an endorsement of this long-standing, unwritten policy. In 2008, the Board of Selectmen approved a new policy, requiring that all distributions made from the Burnham Fund must be approved by a majority of the selectmen, and that selectmen “must recuse themselves of any discussions and decisions pertaining to potential fund recipients for which there is a real or perceived conflict of interest.” In addition, the 2008 Policy stated that distributions from the Burnham Fund “may *not* be considered based on level of income, as much as the demonstrated level of need or personal emergency.” (Emphasis added.)

On June 4, 2010, the OAG wrote to both the Board of Selectmen and the Board of Finance (together, the “Boards”) expressing two primary concerns: (1) the 2008 policy may be interpreted to establish a charitable intent that is materially different from the intent expressed by William D. Burnham; and (2) the oversight mechanism regarding the Burnham Fund, although an improvement over the prior policy, needed additional measures to ensure the proper distribution of funds. We asked that the Town provide the OAG with a policy statement that took our concerns into account.

We received two separate policy statements regarding the Fund; one from Bridgewater’s Board of Selectmen and one from Bridgewater’s Board of Finance. The Board of Selectmen’s policy provides for an objective standard for determining the “poor of Bridgewater” but still allows distributions to those in “temporary crisis” regardless of their income level. With respect to the administrative oversight structure and process of the Fund, the Board of Selectmen’s policy provides little oversight to the discretion given the Board of Selectmen. Most importantly, the Board of Finance has no role in the decision-making process.

The Board of Finance’s policy sets forth the same objective standard for determining the “poor of Bridgewater” and provides that all applicants must meet the income level eligibility requirements. In addition, the Board of Finance policy creates a selection committee made up members of both Boards of Selectmen and Finance to make the distributions decisions; however, the policy does not provide for equal representation of Board of Finance members on the selection committee

Discussion

The Boards have not resolved the differences in their policies or otherwise formulated policies or standards for future management of the Fund. It is incumbent on the members of both Boards, therefore, to work cooperatively and quickly to develop policies to permit the Fund to resume its charitable purpose, while ensuring proper oversight, accountability and transparency. We offer the following principles and guidance:

Distribution of Funds Must Comport with the Fund's Charitable Intent

As you know, charitable assets, like the Fund, are subject to charitable use restrictions pursuant to the Statute of Charitable Trusts and the Statute of Charitable Uses, Conn. Gen. Stat. §§ 45a-514 and 47-2 respectively, which provide that gifts intended for public or charitable purpose "shall forever remain to the uses and purposes to which [they have] been granted according to the true intent and meaning of the grantor and to no other use." Conn. Gen. Stat. § 45a-514. *See also* Conn. Gen. Stat. § 47-2. Given the fidelity one must maintain to the charitable intent of a donor, we have several observations regarding a proper oversight policy of the Fund.

- The purpose of the Fund is clearly intended for "the relief of the poor of the Town of Bridgewater," and that purpose cannot be altered except by a court of competent jurisdiction.
- The residency and objective financial eligibility criteria set forth by both Boards are acceptable.
- Disbursements for "educational assistance" or "scholarships" are **not** consistent with the stated charitable intent of Mr. Burnham, unless the recipient, or the parents of the recipient in the case of a student, also meet the objective financial eligibility criteria set forth by the Boards in their respective policies.
- Disbursements to those who find themselves in an "emergency" or "temporary crisis" are **not** consistent with the stated charitable intent of Mr. Burnham, unless the recipients also meet the objective financial eligibility criteria set forth by the Boards in their respective policies.

The Fund Must Be Managed With Adequate Oversight, Accountability, and Transparency

In addition to ensuring that funds are distributed solely in accordance with Mr. Burnham's charitable intent, you must protect the Fund from abuse and promote its efficient functioning and sustainability. With that in mind, your policies should reflect the following considerations:

- No individual or entity should have exclusive control over a charitable fund, particularly when distributions from that fund are discretionary. Accordingly, the OAG believes that the Town should create a selection committee that ultimately votes on distributions from the Fund and that should be equally comprised of members of **both** the Board of Selectmen and the Board of Finance. In addition, we believe that having an independent and reliable third party, such as the Municipal Agent, perform an initial review of **all** of the requests to the Fund would provide additional balance in the distribution process.

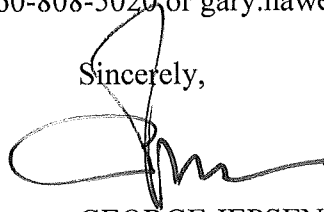
Moreover, the Board of Finance's suggestion that the Treasurer maintain the supporting records of all Fund distributions is consistent with this principle.

- The management of charitable funds by public officials should be transparent and subject to public scrutiny, while also seeking to maintain the privacy and dignity of those seeking and receiving charitable assistance. We are sensitive to the privacy concerns of those who might make application to the Fund, but we believe it is necessary to allow all those individuals involved in the administration of the Fund, in addition to all members of the Board of Selectmen and the Board of Finance, to have access to Fund records.
- The last general issue of importance, and it flows naturally from the first two, is one of process. Not only should the overall administration of the Fund include the distinct steps of application, selection, distribution, reporting, and oversight, but each of those steps should incorporate the three principles of oversight, accountability, and transparency.

The OAG requests that the Boards jointly issue a management policy for the Fund that specifically incorporates the four items regarding charitable intent and that addresses the three policy concerns regarding the management of the Fund. Please forward to the OAG a copy of the final management policy statement after it has been drafted and approved by both Boards.

If you have any questions regarding this letter, please do not hesitate to contact Assistant Attorney General Gary W. Hawes at 860-808-5020 or gary.hawes@ct.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Jepsen", with a large, stylized loop at the beginning and a horizontal line extending to the right.

GEORGE JEPSEN
ATTORNEY GENERAL

cc: Gary W. Hawes, AAG